IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.94 OF 2002
IN
CIVIL APPLICATION NO. 1495 OF 2001
IN
WRIT PETITION NO.6567 OF 2000

Office Notes, Office Memorandum of Coram appearance, court's orders or direction and Prothonotery's orders.	Court's or Judge's Orders.

Mr.S.S.Kulkarni for petitioner.

Mr. C.T.Kripalani for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : NOVEMBER 14, 2006.

P.C. :

1. Heard counsel for the parties. I am not impressed by the explanation given in the application about the non-appearance made by the counsel for the applicant on March 8, 2002. Nevertheless, as the litigant should not suffer for the mistake of the advocate, I would proceed to examine the application on merits.

2. Indeed, the applicant may be justified in contending that as on

today, there is no money decree operating against the applicant. That does not preclude this Court to impose reasonable conditions on the applicant to ensure that if the original petitioners succeeds, the petitioner should not be left with a situation that he has to pursue the remedy of execution of recovery of the money decree passed by the trial Court. I am inclined to take this view as the trial Court has decreed the suit for possession and injunction and also passed consequential order of money decree against the applicant towards the compensation amount. The Appellate Court has set aside the decree only on the ground of jurisdiction of the trial Court to entertain such dispute and not on merits. Thus understood, if the opinion expressed by the Appellate Court was to be set aside in this writ petition, money decree passed against the applicant will get restored, in which case, the

applicant would be liable to pay the specified amount and the recurring compensation amount thereafter.

3. In the circumstances, the appropriate course, to my mind, is to modify the later part of the order passed on 8th March, 2002 requiring the applicant to deposit the arrears as well as future compensation. Instead, the applicant will have to furnish solvent security to the satisfaction of the trial Court in the sum of Rs.1,50,000/-(Rs.One Lakh fifty thousand only) within four weeks from today, failing which the indulgence shown under this order of modifying the earlier order shall stand vacated forthwith without further reference to the court. This modification will meet ends of justice.

4. In so far as the order of injunction granted on 8th March, 2002 is concerned, the same will operate

as it is, as counsel appearing for the applicant fairly accepts that he has no objection for such order continuing till disposal of the Writ Petition.

5. Accordingly, this application is disposed of on the above terms.